



CONNECTICUT BAR EXAMINATION
30 July 2013
QUESTION #1

On January 1, 2009, Mary entered into a written employment contract with Welsh Industries (Welsh) for a period of two years, during which time she was to work in their Marketing Department on special projects. The contract provided that she would receive a salary of \$60,000 each year. The contract was a standard form used by Welsh, with blanks to be filled in as to length of time of employment, position and salary. Among the contract provisions were the following:

For two years after my employment with Welsh ends, I will not work in marketing for any company in the USA that has been a Welsh client within the period of one year prior to the termination of my employment.

I agree, as a condition of my employment, that I will submit any dispute that might arise between me and Welsh to binding arbitration.

On January 1, 2011, Mary and Welsh orally extended her contract for another two years. On January 1, 2012, Mary was notified by Welsh that her services would no longer be needed. Mary set about finding another position and immediately was able to get a job with a Welsh client, Minor Industries (Minor), in a neighboring state in their marketing department doing office management. Unfortunately, Minor was only able to pay Mary \$40,000 a year. Upset about her dealings with Welsh, Mary sued Welsh in state court for breach of contract seeking \$60,000.

Discuss fully the likely positions to be taken by Welsh, Mary's likely response to the positions taken by Welsh, and any damage award, if appropriate.



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QUESTION #2

Defendant hires you to defend her against a charge of criminal trespass involving her alleged entry upon the private property of a nuclear power plant to protest its operation as unsafe. She wants to defend on the ground of “necessity” (the harm she caused was outweighed by the harm she sought to avert), and to testify about her political beliefs. You refuse because you believe the trial court will not admit evidence about the defense and will exclude her testimony as irrelevant. (The defense has not been recognized in your jurisdiction when the harm to be avoided is unlikely to occur.) You insist instead on defending on the ground that the eyewitness identification that defendant was present is shaky. But defendant wants to admit at trial she was present. In your last conference before trial, defendant tells you she will not attend trial because she is certain that the proceeding will be unfair. She can be reached, she adds, through a telephone number she gives to you.

1. Did you act appropriately in counseling defendant about the defense case? Explain fully.
2. As she said, defendant fails to appear at trial. In issuing an arrest warrant, the judge orders you to provide whatever information might help the police find the defendant. How do you respond to the judge’s order? Explain fully.



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QUESTION #3

On January 5, Bank enters into a working capital agreement with Debtor. The agreement provides: (1) Bank shall make advances to Debtor upon Debtor's request; (2) Debtor grants Bank a security interest in all Debtor's present and after-acquired inventory, accounts, and equipment; and (3) the security interest secures all Debtor's present and future payment obligations to Bank.

On January 10, Bank files an appropriate financing statement regarding its security interest.

On March 5, Debtor and Inventory Supplier enter into an agreement that provides: (1) Inventory Supplier shall sell certain equipment to Debtor ("New Inventory"); (2) the purchase price is to be paid in installments; and (3) Debtor grants Inventory Supplier a security interest both in the New Inventory and in all Debtor's presently owned and after-acquired inventory ("Other Inventory") to secure the purchase price obligation.

On March 10, Inventory Supplier files an appropriate financing statement regarding its security interest, although it does not notify Bank of its security interest until March 20.

On March 21, the New Inventory is delivered to Debtor.

On June 5, Debtor and Equipment Company enter into an agreement that provides: (1) Equipment Company shall sell certain equipment to Debtor ("New Equipment"); (2) the purchase price is to be paid in installments; and (3) Debtor grants Equipment Company a security interest both in the New Equipment and in all Debtor's presently owned and after-acquired equipment ("Other Equipment") to secure the purchase price obligation.

On June 10, Equipment Company files an appropriate financing statement regarding its security interest, although it does not notify Bank of its security interest.

On June 15, the New Equipment is delivered to Debtor.

Discuss fully the relative priorities of Bank, Inventory Supplier, and Equipment Company to Debtor's New Inventory, Other Inventory, New Equipment, and Other Equipment.



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QUESTION #4

Driving home after a long day at the office, Dora was traveling on a road heavy with “stop and go” commuter traffic. When the line of cars in front of her came to a stop, Dora failed to stop her sedan in time. Her car collided with the vehicle in front: a classic “fender bender.” Luckily for Dora, her car had been moving at a low rate of speed, leaving the front of her sedan dented, but otherwise leaving Dora unharmed.

Paul regularly takes this commuter road home, and was the driver of the car immediately in front of Dora’s. Paul claims that the impact from Dora’s collision caused him sharp pain in his neck area. Paul has sued Dora for damages from his “whiplash” injury. Paul has retained Dr. Frederick, a chiropractor and “accident reconstruction” expert who has testified in many cases involving neck injuries from auto accidents, to testify on Paul’s behalf.

Discuss fully the admissibility of the following evidence in the trial of Paul v. Dora.

- A. Paul’s lawyer first calls Paul to the stand. Paul will testify that he saw Dora’s car coming toward his just before the collision, and that, in his opinion, Dora was “driving much too fast and recklessly” given the busy traffic on the commuter road.
- B. On cross-examination, Dora’s lawyer asked Paul if he told Dora at the scene of the accident that he was not injured. Paul denied making the statement. Dora’s lawyer now calls Dora to the stand to testify as to Paul’s statement.
- C. Paul’s lawyer calls Dr. Frederick to the stand. Dr. Frederick testifies that Paul’s neck injury “resulted from the collision caused by Dora’s negligent driving.”



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QUESTION #5

Reliable Insurance Company (Reliable) wrote a standard commercial liability insurance policy for Newville Metropolitan Sewer District (NMSD). In February of 2007, a transfer pump failed as a result of poor maintenance and age resulting in sewage backing up into the basements of several homes. Reliable has documents that prove that NMSD recognized at that time that the pump needed to be replaced in order to avoid continuing risks of failure. Apparently for budgetary reasons, the management decided to delay making this investment until the next fiscal year (it began in September of 2007). The documents show that the managers recognized that it was substantially certain the pump would fail one or more times before September 2007. However, the managers concluded that the risks of serious harm were slight and so decided to use short-term inexpensive fixes to keep the pump running.

In fact, the pump did fail several more times. The most serious occurred in July 2007 and resulted in damage to twenty-five (25) basements, including two (2) store basements where significant merchandise was destroyed. This event resulted in claims of over \$3 million.

The Reliable policy provides: "We will indemnify you for any liability you incur but only as a result of accidental and unintended injury to the property or person of others." Based on this provision, Reliable has notified NMSD that it will not pay any of the July 2007 claims or any other claims resulting from failure of the pump except those that arose from the February 2007 failure.

Reliable has filed a declaratory judgment action asking the court to confirm its decision. How should the court rule? Explain fully.



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QUESTION #6

Ames and Verdemont are hypothetical states in the United States.

Todd enters into a contract with Betsy's Burgers (BB) whereby Todd will operate a franchise location in BB's nation-wide network of fast-food restaurants. Todd's franchise is located in his home state of Ames. BB is incorporated and has its headquarters in state of Verdemont. One provision of the franchise contract states that BB may terminate the contract upon thirty days written notice and without cause. Another provision of the contract states: "The law of the state of Verdemont shall govern any question concerning interpretation or enforceability of this contract."

BB subsequently terminated the contract, giving thirty days written notice but giving no cause. Todd responded by bringing suit against BB for breach of contract in Ames state court. Todd bases his case on an Ames state statute that forbids termination of franchise contracts by the franchisor without cause. A preamble to the Ames statute expresses concern that in-state franchisees might otherwise be victimized by out-of-state franchisors. BB bases its case on Verdemont law, which would regard a clause permitting a franchisor to terminate the contract without cause to be valid and enforceable.

Ames state courts follow the choice-of-law approach of the Restatement (Second) of Conflicts. Verdemont state courts follow the original Restatement of Conflicts.

Which state's law should apply to determine the validity of the contract clause permitting termination without cause? Explain fully.



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QUESTION #7

From the Multistate Essay Examination

A woman was born and raised in the largest city (“the city”) of State A, where she also attended college.

Three years ago, the woman purchased a 300-acre farm and a farmhouse in neighboring State B, 50 miles from the city. She moved many of her personal belongings to the State B farmhouse, registered her car in State B, and acquired a State B driver’s license. She now spends seven months of the year in State B, working her farm and living in the farmhouse. She pays income taxes in State B, but not in State A, and lists State B as her residence on her federal income tax returns.

However, the woman has not completely cut her ties with State A. She still lives in the city for five months each year in a condominium that she owns. She still refers to the city as “home” and maintains an active social life there. When she is living on the farm, she receives frequent weekend visits from her city friends and occasionally spends the weekend in the city at her condominium. She is a member of a health club and a church in the city and obtains all her medical and dental care there. She is also registered to vote and votes in State A.

A food product distributor sells food items to grocery stores throughout a five-state region that includes States A and B. The distributor is a State C corporation. Its corporate headquarters are in State B, where its top corporate officers, including its chief executive officer (CEO), have their offices and staff. The distributor’s food processing, warehousing, and distribution facilities are all located in State A.

Three years ago, the woman and the distributor entered into a 10-year written contract providing that the woman would sell all the produce grown on her farm each year to the distributor. The contract was negotiated and signed by the parties at the distributor’s corporate headquarters in State B.

The woman and the distributor performed the contract for two years, earning her \$80,000 per year. Recently, the distributor decided that the woman’s prices were too high. At a meeting at its corporate headquarters, the distributor’s CEO asked the woman to drop her prices. When she refused, the CEO informed her that the distributor would no longer buy produce from her and that it was terminating the contract.

The woman has sued the distributor for anticipatory breach of contract. She seeks \$400,000 in damages. She has filed suit in the United States District Court for the District of State A, invoking the court’s diversity jurisdiction.

State A's long-arm statute provides that "a court of this State may exercise personal jurisdiction over parties to the fullest extent permitted by the due process clause of the Fourteenth Amendment to the United States Constitution."

The distributor has moved to dismiss the woman's action for lack of subject-matter jurisdiction and for improper venue.

1. Should the court grant the motion to dismiss for lack of subject-matter jurisdiction? Explain.
2. Should the court grant the motion to dismiss for improper venue? Explain.

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QUESTION #8

From the Multistate Essay Examination

After a dump truck unloaded gravel at a road construction job site, the trucker negligently drove away with the truck bed still in a raised position. The raised truck bed hit an overhead cable, causing it to fall across the highway.

The telephone company that owned the fallen cable sent one of its employees to the scene in a company vehicle. The employee's responsibilities were expressly limited to responding to cable-damage calls, assessing damage, and reporting back to the telephone company so that a repair unit could be dispatched.

The foreman of the road construction job site asked the telephone company employee if the foreman's crew could lift the cable off the highway. Fearful that the cable might be damaged by traffic, the telephone company employee said, "Go ahead, pick it up. Just don't damage the cable." The foreman then directed his crew to stretch the cable over the highway so that traffic could pass underneath.

Shortly thereafter, a bus passing under the telephone cable hit the cable and dislodged it, causing the cable to strike an oncoming car. The driver lost control of the car and hit a truck carrying asphalt to the road construction site. As a result of the collision, hot asphalt spilled and severely burned the foreman.

The foreman is now threatening to sue the telephone company on the ground that it is responsible for its employee's negligence in authorizing the road construction crew to stretch the cable across the highway. The telephone company argues that, even assuming that its employee was negligent, the telephone company is not liable because:

1. the telephone company employee's acts were outside the scope of his employment and thus cannot be attributed to the telephone company;
2. there is no other agency theory under which the foreman could hold the telephone company liable for its employee's acts; and
3. the telephone company employee's acts were not the proximate cause of the foreman's injuries.

Assess each of the telephone company's responses.

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QUESTION #9

From the Multistate Essay Examination

A man asked a friend for a loan. The friend was willing to make the loan so long as the man paid interest at a rate that would enable the friend to make a profit on the transaction. After some discussion, they agreed that the friend would lend the man \$4,000, to be repaid one month later together with interest at a rate two percentage points higher than the “prime interest rate” charged by First Bank. (First Bank’s prime interest rate is reported daily in the financial press.)

At dinner that evening, the friend handed the man a check for \$4,000, payable to his order, that was drawn on the friend’s account at First Bank. In exchange, the man handed the friend a document signed by him and dated that day. The document read, in its entirety, as follows: “The undersigned hereby agrees to pay to bearer the sum of \$4,000, plus interest at a rate two percentage points higher than the prime interest rate charged by First Bank on the date hereof, no later than one month from the date hereof.”

After dinner, as the two waited for a bus together, they were robbed. The robber took the check from the man and the document described above from the friend.

The next day, the robber forged the man’s signature on the back of the check and then sold the check to a check-cashing business, handing the check to the manager of the business in exchange for \$3,500 in cash. The business and its employees acted in good faith and had no reason to believe that the check did not belong to the robber or that the man’s signature had been forged. The following day, the robber sold the document that he had stolen from the friend to a local investor, handing the investor the document in exchange for \$2,500 in cash. The investor acted in good faith and had no reason to believe that the document did not belong to the robber.

A few days later, the manager of the check-cashing business took the check to First Bank, handed the check to the teller, and asked that the amount of the check be paid. But the teller refused to pay because the friend had contacted First Bank and stopped payment on the check. Accordingly, the teller handed the check back to the manager.

On the date on which the document signed by the man called for him to pay, the investor contacted the man and demanded payment. The man responded that he would not pay because his promise had been made to his friend, not to the investor, and, moreover, he should not have to pay because the friend’s check had been stolen from him with the result that he never received the money that his friend was supposed to loan him.

1. Does the check-cashing business have a right to recover the amount of the check from the friend? Explain.

2. Is the document signed by the man a negotiable instrument? Explain.

3. Assuming that the document is a negotiable instrument, does the investor have a right to recover from the man the amount that the man promised to pay in the document he gave to the friend? Explain.

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QUESTION #10

From the Multistate Essay Examination

On February 2, Alice, Bob, and Carla formed ABC Hospitality, LLC (ABC), a member-managed limited liability company, for the purpose of building, owning, and running a 100-room luxury hotel in their hometown. ABC soon began to experience unexpected financial problems, prompting Bob to look for other investment opportunities.

On March 10, Bob told Alice and Carla that, although he would remain as a member of ABC, he would no longer contribute any capital to ABC, and he was also becoming a co-owner of the Metro Inn, an existing 200-room hotel in the same town near the ABC hotel project. Alice and Carla objected to Bob's plan, fearing that he might put the interests of the Metro Inn ahead of his existing obligations to ABC. In response, Bob cited § 5.1 of ABC's Operating Agreement, which states as follows:

Members of ABC shall not in any way be prohibited from or restricted in managing, owning, or otherwise having an interest in any other business venture that may be competitive with the business of ABC.

Shortly after Bob became a co-owner of the Metro Inn, ABC's financial situation worsened. Alice and Carla worried that ABC would not be able to pay a bill it owed to its concrete supplier. Alice proposed to pay the concrete supplier's bill from her own personal funds and then obtain reimbursement from ABC once the hotel project was completed. Alice wanted to do this so that she could file a personal financial statement which underreported her assets and so enable her son to qualify for student financial aid. Carla agreed to this proposal. Alice and Carla also agreed to alter ABC's financial records so that it would appear as if ABC had paid the concrete supplier's bill out of its own accounts, without showing the obligation to reimburse Alice for that amount.

In the weeks following Alice's payment to the concrete supplier, several other of ABC's bills became due. Alice tried to pay as many of these bills as she could using her personal funds, but despite her best efforts, it soon became clear that ABC was rapidly approaching insolvency. On August 15, the hotel's designer left a message for Carla seeking payment of an overdue bill.

Alice and Carla were concerned about the solvency of the company. Without responding to the designer, Alice and Carla, acting with Bob's consent, sold all of ABC's property and remaining assets. Alice and Carla each kept one-third of the sale proceeds and gave the remaining one-third to Bob. They did not file articles of dissolution with the state. When the designer later called Carla again about the bill, she responded that ABC had been "dissolved" and that no payment would be forthcoming.

1. Did Alice and Carla have any legal basis to object to Bob's co-ownership of the Metro Inn? Explain.

2. Under what theory or theories could Alice, Bob, or Carla be personally liable to the designer? Explain.

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QUESTION #11

From the Multistate Essay Examination

Two years ago, a builder constructed a house for a woman and conveyed that house to her for \$300,000 at the closing by a warranty deed, which was promptly recorded. The sale contract contained no express warranties relating to the condition of the house. To finance the purchase, the woman borrowed \$200,000 from a local bank secured by a mortgage on her new house. The mortgage note provided that in the event of the woman's failure to make two consecutive monthly mortgage payments, the balance would become immediately due and payable. The mortgage was promptly recorded.

One year ago, the woman accepted a new job and moved. At that time, her house was worth \$360,000 and there was a balance on the mortgage of \$195,000. She sold the house to a man and delivered a quitclaim deed to him in exchange for \$160,000. The quitclaim deed was promptly recorded and made no reference to the woman's mortgage obligation. The mortgage obligation was not discharged at the closing. However, the man immediately began to make the woman's monthly mortgage payments to the bank after the closing.

Nine months ago, water seeped into the basement of the house during a major storm, causing substantial damage. It is undisputed that the seepage was due to defective concrete used by the builder and not to any negligence on the builder's part. The man called the builder, told him about the seepage, and demanded that the builder fix the concrete. The builder responded: "That's your problem." The man then repaired the concrete at a cost of \$80,000.

Thereafter, the man sued the builder to recover the \$80,000 he had spent to repair the concrete. While the case was pending, the man stopped making mortgage payments. The bank sued the man to foreclose on the mortgage and, if necessary, obtain a deficiency judgment against him on the note if the sale proceeds were insufficient to discharge the mortgage debt. The man has joined the woman as a third-party defendant in the lawsuit.

1. Is the man likely to prevail against the builder to recover the \$80,000 he spent to repair the concrete? Explain.
2. Is the man personally liable for the outstanding balance on the mortgage note between the woman and the bank? Explain.
3. If the bank is successful in its foreclosure action, will the man be able to recover damages from the woman? Explain.

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QUESTION #12
From the Multistate Essay Examination

Twenty years ago, John and Mary were married. One month before their wedding, John and Mary signed a valid prenuptial agreement in which each of them waived “any property rights in the estate or property of the other to which he or she might otherwise be legally entitled upon the termination of their marriage by death or divorce.”

Seventeen years ago, John executed a valid will, which provided as follows:

I, John, leave my entire estate to my wife, Mary. However, if I should hereafter have children, then I leave three-fourths of my estate to my wife, Mary, and one-fourth of my estate to my children who survive me, in equal shares.

Fifteen years ago, John had an extramarital affair with Beth, who gave birth to their child, Son. Both Beth and John consented to Son’s adoption by Aunt. At the time of the adoption, Beth, John, and Aunt agreed that Son would not be told that he was the biological child of Beth and John.

Three years ago, Aunt died, and Son moved into John and Mary’s home. At that time, John admitted to Mary that he had had an extramarital affair with Beth which had resulted in Son’s birth.

Three months ago, Mary filed for divorce. Nonetheless, she and John continued to live together. One month ago, before John and Mary’s divorce decree was entered, John was killed in a car accident. John’s will, executed 17 years ago, has been offered for probate. John’s will did not designate anyone to act as the personal representative of his estate.

John was survived by Mary, Son, and John’s mother.

1. To whom should John’s estate be distributed? Explain.
2. Who should be appointed as the personal representative of John’s estate? Explain.

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